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TOP SECRET SENSITIVE

State Dept. review completed

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TOP SECRET SENSITIVE 130936Z SEP 72 VIA CAS CHANNELS (BUNKER)
FROM: AMBASSADOR BUNKER SAIGON 0156 IMMEDIATE
TO: THE WHITE HOUSE, EXCLUSIVELY EYES ONLY FOR HENRY A. KISSINGER
REF: SAIGON 0155
SECTION ONE OF THREE

HEREWITH MY MEMORANDUM AND COMMENTS OF THE GVN ON A) THE U.S. MEMORANDUM DATED SEPTEMBER 11, 1972 CONCERNING THE U.S. PEACE COUNTER-PROPOSAL, AND B) THE U.S. MEMORANDUM DATED SEPTEMBER 11, 1972 CONCERNING THE U.S. COUNTER-PROPOSAL ON THE PROCEDURES FOR THE CONDUCT OF NEGOTIATIONS:

**MEMORANDUM FOR PRESIDENT THIEU CONCERNING
 PEACE PROPOSAL AND PROCEDURES FOR
 CONDUCT OF NEGOTIATIONS**

1. THE POINTS MADE BY THE GVN ON THE POLITICAL AND PROCEDURAL DOCUMENTS HAVE BEEN CAREFULLY REVIEWED, NOTING THAT ALL OTHER POINTS IN THE SUBSTANTIVE PROPOSAL ARE NOW AGREED.
2. WE HAVE FOUND THE SPIRIT OF THE GVN'S SUGGESTED CHANGES HELPFUL AND CONSTRUCTIVE AND WE HAVE ACCEPTED MOST OF THEM. THERE ARE ONLY A FEW SUGGESTED MODIFICATIONS WHICH WE BELIEVE, WERE WE TO ACCEPT THEM, WOULD DEPRIVE OUR PLANS OF ANY NOVELTY AND WOULD ENABLE THE OTHER SIDE TO REJECT THEM OUT OF HAND OR PUT US ON THE DEFENSIVE WITH REGARD TO PUBLIC OPINION. AS PRESIDENT NIXON MENTIONED IN HIS LETTER TO PRESIDENT THIEU AND AS WE HAVE POINTED OUT IN PREVIOUS MESSAGES, WE BELIEVE WE HAVE GONE A LONG WAY TO MEET GVN CONCERNS. PRESIDENT NIXON HAS ALSO SAID WE HAVE NOT COME ALL THIS WAY IN THREE AND ONE-HALF YEARS TO SEE IT UNDONE IN THE FINAL MONTHS OF HIS FIRST TERM. IT IS IN THIS SPIRIT THAT WE HOPE THE GVN WILL TAKE OUR FEW REMAINING COMMENTS.

MORI/CDF C03322152

ON-FILE NSC RELEASE INSTRUCTIONS APPLY

WHAT WE ACCEPT: SUBSTANTIVE PROPOSAL

3. IN FIRST SENTENCE OF POINT 4, WE ACCEPT ADDITION "FREE FROM ANY OUTSIDE INTERFERENCE."

4. WE ACCEPT NEW SECOND SENTENCE IN SECTION 4 B) ALTHOUGH THE LANGUAGE WAS PRECISELY WHAT WAS USED IN THE AGREED JANUARY 25 PLAN.

5. IN SECTION 4 D) WE AGREE TO SUBSTITUTION OF THE WORD "VARIOUS" FOR THE EXECUTIVE, LEGISLATIVE, AND JUDICIAL".

6. REGARDING SECTION 4 F) WE ACCEPT THE NEW WORDING: "AFTER THE PRESIDENTIAL ELECTION THDBCONSTITUTION WILL BE REVIEWED FOR ITS CONSISTENCY WITH THE CONDITIONS OF PEACE WITH A VIEW TOWARD RESTORING A SPIRIT OF NATIONAL RECONCILIATION THROUGHOUT THE COUNTRY." XE ASSUME, THEREFORE, THAT THE PHRASE "REVIEW OF THE CONSTITUTION" IN SECTION 4 A) CAN BE RETAINED.

WHAT WE ACCEPT: PROCEDURES

7. IN POINT 1, WE ACCEPT DELETION OF "IN DETAIL" IN THE FIRST SENTENCE OF LAST PARAGRAPH AND SUBSTITUTION OF "FOR FURTHER DISCUSSION" IN PLACE OF "FOR DETAILED DISCUSSION".

8. WE AGREE TO DELETION OF WORDS "IN DETAIL" IN SECOND SENTENCE OF POINT 2.

9. WE ACCEPT GVN CHANGES ON POINT 4.

AREAS OF REMAINING DIFFERENCE: SUBSTANTIVE

10. WE BELIEVE THAT THE GVN REVISION OF THE FIFTH PARAGRAPH, SECTION 4 A) ON THE COMPOSITION OF THE CNR IS EXTREMELY UNWISE. ON THE ONE HAND, IT GIVES UP THE VETO CONTAINED IN OUR FORMULATION. ON THE OTHER HAND, THE GVN CHANGE WOULD REMOVE ONE OF THE FEW NEW ELEMENTS OF OUR PROPOSAL SINCE THE JANUARY 25 PLAN. WE HAVE ALREADY AGREED TO DROP REFERENCE TO EQUAL PROPORTIONS. WITHOUT OUR ALREADY WATERED DOWN VERSION, WE WOULD BE BACK TO THE JANUARY 25 PROPOSAL AND WOULD NOT HAVE A VEHICLE FOR OUR STRATEGY FOR THE NEXT FEW MONTHS. WE AGREE THAT THE PROCESS OF DECIDING THE COMPOSITION OF THE CNR WILL BE EXTREMELY TIME CONSUMING AND THAT THERE IS A GOOD CHANCE OF ITS LEADING TO A STALEMATE. THIS IS ONE ELEMENT OF PROTECTION FOR THE GVN AND ONE REASON WHY WE BELIEVE OUR FORMULATION CAN SAFELY BE ACCEPTED. AN ADDITIONAL POINT IS THAT ANY PLAUSIBLE NAMES THAT COULD BE PUT FORWARD FOR THE THIRD ELEMENT OF THE COMMITTEE WOULD COME FROM EXISTING POLITICAL GROUPS IN SOUTH VIET-NAM AND WOULD BE NATIONALIST AND ANTI-COMMUNIST. THUS WE BELIEVE THAT THE GVN HAS AMPLE SAFEGUARDS IN NEGOTIATIONS WHICH COULD LEAD TO EITHER AN EFFECTIVE GVN MAJORITY ON THE CNR OR AT WORST A STALEMATE.

REMAINING AREAS OF DIFFERENCE: PROCEDURES

11. IT IS OUR VIEW THAT WHAT WILL DETERMINE THE OUTCOME IS NOT WHAT IS IN THE PROCEDURAL DOCUMENT, BUT WHAT HAPPENS IN THE FORUMS IF AND WHEN THEY ARE OPENED. AS LONG AS THE GVN RETAINS A VETO IN WHATEVER FORUM IT PARTICIPATES, WE VIEW PROCEDURAL QUESTIONS AS ESSENTIALLY SECONDARY. THE COMPLEXITY OF THE ISSUES SUCH AS CEASE-FIRE AND COMPOSITION OF VARIOUS BODIES MAKES IT OBVIOUS THAT THEY CANNOT BE SETTLED IN THE FIRST FORUM AND WILL HAVE TO BE REFERRED FOR CONSIDERATION IN THE OTHER FORUMS.

12. IN RESPECT TO PROCEDURAL POINT 2, WE ARE NOT CERTAIN WE UNDERSTAND THE RATIONALE FOR THE FIRST TWO GVN SUGGESTIONS. IF, IN PROPOSING DELETION OF THE "AGREEMENTS ON" IN THE FIRST SENTENCE THE GVN IS APPREHENSIVE ABOUT LEGAL IMPLICATIONS OF WORD "AGREEMENTS", WE SUGGEST SUBSTITUTION OF THE WORDS "WHAT HAS BEEN AGREED". THE SENTENCE WILL THEN READ "THIS FORUM WILL DEAL WITH WHAT HAS BEEN AGREED ON THE MILITARY QUESTIONS..."

13. THE SECOND GVN PROPOSED CHANGE IN RESPECT TO POINT 2 SEEMS INCONSISTENT WITH POINT 1 WHICH ALREADY PROVIDES FOR DEALINGS ON SOUTH VIET-NAM POLITICAL AS WELL AS MILITARY QUESTIONS IN THE US/DRV FORUM. THESE SUGGESTED DELETIONS WOULD ALSO MAKE THE NEXT SENTENCE VIRTUALLY MEANINGLESS.

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SECTION TWO OF THREE

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14. ON POINT 3, WE DO NOT THINK IT POSSIBLE TO ACCEPT THE PROPOSED CHANGES. WE FULLY UNDERSTAND THE CONCERN OF THE GVN AND OBVIOUSLY WE HAVE ABSOLUTELY NO INTENTION OF RECOGNIZING TWO SEPARATE GOVERNMENTS IN SOUTH VIET-NAM. AT THE SAME TIME, AS PART OF OUR STRATEGY OF BEING CONCILIATORY ON ESSENTIALLY PERIPHERAL ISSUES, WE DO NOT WANT TO REJECT OUTRIGHT HANOI'S CONCEPT OF A THREE-WAY VIETNAMESE FORUM. WE BELIEVE WE HAVE MET IMPORTANT GVN CONCERNS ON THIS POINT BY DELETION OF WORD "TRIPARTITE" AND BY CHANGING THE NAME OF THE PRG TO NLF. MOREOVER IF THE FORUM WERE EVER TO BECOME OPERATIVE, THE GVN WOULD HAVE A VETO AND COULD TREAT THE NLF IN WHATEVER WAY IT WISJ. WE FEEL THAT WE CANNOT AFFORD A BLOW-OUT WITH THE OTHER SIDE OVER WHAT IS A PROCEDURAL QUESTION.

15. WE WOULD PROPOSE TO ADD A FINAL SUBSECTION TO POINT 4 CONCERNING THE ATTITUDE OF THE U.S. IT IS THE STANDARD LANGUAGE WE HAVE USED IN SPEECHES AND IN OUR JANUARY 25 PLAN. IT READS AS FOLLOWS:

"FOR ITS PART, THE UNITED STATES DECLARES THAT IT RESPECTS THE SOUTH VIETNAMESE RIGHT TO SELF DETERMINATION; IT WILL REMAIN COMPLETELY NEUTRAL WITH RESPECT TO THE POLITICAL PROCESS IN SOUTH VIET-NAM; AND IT WILL ABIDE BY THE OUTCOME OF ANY POLITICAL PROCESS SHAPED BY THE SOUTH VIETNAMESE PEOPLE THEMSELVES."

16. IN PROCEDURAL POINT 3, WE SUGGEST USING THE WORDS "DEAL WITH" RATHER THAN "DISCUSSION" TO MAKE IT CONSISTENT WITH THE REMAINDER OF THE TEXT.

17. WHAT CONCERNS US AND WHAT WE THINK WE SHOULD BOTH TRY TO AVOID IS PUTTING FORWARD A PLAN THAT COULD LOOK LIKE A TRANSPARENT RECASTING OF THE JANUARY 25 PROPOSAL. THIS WOULD UNDERMINE OUR STRATEGY AND OUR JOINT GVN/US OBJECTIVES.

SEPTEMBER 11, 1972

COMMENTS OF THE REPUBLIC OF VIET NAM
ON THE US MEMORANDUM DATED SEPTEMBER 11, 72
CONCERNING THE US PEACE COUNTER-PROPOSAL

1. IN THE LAST PARAGRAPH OF YOUR MEMORANDUM, SUMMING UP YOUR REMARKS, YOU OBSERVED THAT THE NEW POLITICAL PROPOSAL SHOULD NOT "LOOK LIKE A TRANSPARENT RECASTING OF THE JANUARY 25 PROPOSAL"

WE AGREE WITH THIS, AND WOULD LIKE TO POINT OUT THAT THE NEW VERSION OF THE PROPOSAL, EVEN AFTER THE RESERVATIONS WE MADE IN OUR MEMORANDUM OF SEPTEMBER 9, CONTAINS TWO VERY IMPORTANT NEW FEATURES IN COMPARISON WITH THE JANUARY PROPOSAL. THERE ARE:

- I. A GOVERNMENT OF NATIONAL RECONCILIATION AFTER THE NEW PRESIDENTIAL ELECTION, IN PROPORTION WITH THE VOTES THE OTHER SIDE WOULD RECEIVE AT THE ELECTION: THIS INDICATES THAT THE POLITICAL PROCESS DOES NOT END AT THE COMPLETION OF THE ELECTION.
SUCH PRESENCE OF THE OTHER SIDE CONSTITUTES AN IMPORTANT DEROGATION TO THE POLICY PURSUED BY THE GVN UNTIL NOW.
- II. AN ANNOUNCEMENT OF THE PRINCIPLE OF CONSTITUTIONAL REVIEW FOR NATIONAL RECONCILIATION.
THESE TWO NEW FEATURES ARE ALSO TWO IMPORTANT CONCESSIONS FROM THE GVN.

2. IN RESPECT TO POINT 6 OF YOUR MEMORANDUM WE THINK THAT THE PHRASE "REVIEW OF THE CONSTITUTION" SHOULD NOT BE RETAINED IN SECTION 4 (A) SINCE THE TASK OF REVIEWING THE CONSTITUTION IS CLEARLY SPELLED OUT IN NEW SECTION 4 (F). TO INCLUDE "REVIEW OF THE CONSTITUTION" IN SECTION 4 (A) WOULD BE SUPERFLUOUS, AND IMPLIES THAT UNDER THE PRESENT CONSTITUTION THE SOUTH VIETNAMESE PEOPLE HAVE NOT EXERTED A FREE CHOICE.

3. WE ACCEPT THAT POINT 15 OF YOUR MEMORANDUM COULD BE INCLUDED IN YOUR COUNTER-PROPOSAL.

4. WITH REGARD TO POINT 10 OF YOUR MEMORANDUM CONCERNING SECTION 4 (A) ON THE COMPOSITION OF THE CNR, WE REGRET THAT WE ARE NOT ABLE TO ACCEPT ANY WORDING WHICH IMPLIES OR MAKE PEOPLE THINK OF 3 DISTINCT COMPONENTS OF WHATEVER BODY, BE IT A COMMITTEE OR A GOVERNMENT WHICH THE COMMUNISTS HAVE ADVOCATED.

IN THE LIGHT OF THE NLF STATEMENT OF SEPTEMBER 11, 72 ON WHICH THE SOUTH VIETNAMESE PEOPLE HAVE SHOWN THEIR INDIGNATION, WE FEEL IT EVEN MORE NECESSARY THAN EVER TO TAKE A CLEAR STAND ON THIS SUBJECT.

AS WE HAVE STATED IN OUR PREVIOUS MEMORANDA, WE CONSIDER THAT THE IMPORTANT RESPONSIBILITIES GIVEN TO THE CNR MAKE IT A SUPER GOVERNMENT WHICH REPLACES THE NATIONAL ASSEMBLY, THE SUPREME COURT IN THE TASK OF ELECTING THE MOST IMPORTANT POSITION IN SVN AND WHICH AFFECTS THE COMPOSITION OF THE FUTURE GOVERNMENT.

THE NLF REPRESENTS ONLY A VERY SMALL MINORITY, SUPPORTED AND DIRECTED FROM OUTSIDE. IN APPLICATION OF THE PRINCIPLE OF SELF-DETERMINATION BY THE PEOPLE OF SVN, PROCLAIMED SO OFTEN BY ALL THE INTERESTED PARTIES IN THIS CONFLICT AND WHICH THE COMMUNISTS HAVE REPEATED IN THEIR RECENT STATEMENT, THE NLF CAN ONLY, AT BEST, HAVE A VOICE COMMENSURATE WITH ITS POLITICAL STRENGTH.

THE COMMUNISTS HOWEVER DEMAND A 3 COMPONENT GOVERNMENT IN ORDER TO ASSUME A POSITION EQUAL TO THAT OF THE LEGAL GVN, AND TO TRY TO ISOLATE THE GVN FROM THE POLITICAL FORCES AND TENDENCIES IN SVN PRESENTED AS A SO-CALLED "THIRD FORCE".

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FINAL SECTION OF THREE

WE RECOGNIZE THAT THERE EXIST IN SVN POLITICIANS AND POLITICAL FORCES IN OPPOSITION WITH THE GVN. THESE POLITICIANS AND POLITICAL FORCES ARE IN SVN, AND THEIR OPPOSITION TO THE GVN IS RECOGNIZED LIKE IN ANY OTHER DEMOCRATIC COUNTRIES WHICH ACCEPT PARLIAMENTARY PROCEDURES.

IT SHOULD BE KEPT IN MIND THAT THE GVN IS CONSTITUTIONALLY ELECTED BY ALL THE PEOPLE. THEREFORE IT REPRESENTS THE WHOLE PEOPLE OF THE RVN, AND DOES NOT JUST STAND SIDE BY SIDE WITH INTERNAL POLITICAL FORCES AND TENDENCIES IN SVN. A "THIRD FORCE" THEREFORE IS COMPLETELY UNJUSTIFIED.

A POLITICAL SOLUTION IN THE CONTEXT OF A PEACE SETTLEMENT IS DESTINED TO SETTLE THE PROBLEM BETWEEN ONLY 2 SIDES IN THIS CONFLICT. THIS IS NOT A TRIANGULAR CONFLICT.

AFTER THOUGHTFUL CONSIDERATION, WE BELIEVE THAT THE WORDING OF SECTION 4 (A) ON THE COMPOSITION OF THE CNR SHOULD BE AS FOLLOWS:

"THE COMMITTEE WILL BE COMPOSED OF REPRESENTATIVES OF ALL THE POLITICAL, RELIGIOUS FORCES AND TENDENCIES IN SVN. THE NLF IS CONSIDERED AS ONE OF THE ABOVE. THE REPRESENTATIVES WILL BE DESIGNATED BY MUTUAL AGREEMENT.

IN THE CASE THAT THIS PARTICULAR POINT IS CONSIDERED AS NOT OFFERING SOMETHING VERY NEW IN COMPARISON WITH THE JANUARY PROPOSAL, WE WISH TO POINT OUT THAT THE WHOLE PROPOSAL CONTAINS VERY IMPORTANT NEW CONCESSIONS AS INDICATED IN POINT I OF THIS MEMORANDUM.

5. IN VIEW OF OUR ABOVE COMMENTS, WE SUGGEST THE US PEACE COUNTER-PROPOSAL TO BE PHRASED AS FOLLOWS. (SEE ATTACHED DOCUMENT)

SEPTEMBER 13, 72

ON THE US MEMORANDUM DATED SEPT. 11, 72
CONCERNING THE US COUNTER-PROPOSAL ON THE
PROCEDURES FOR THE CONDUCT OF NEGOTIATIONS

1. POINT 11 OF YOUR MEMORANDUM STATES THAT AS LONG AS THE GVN RETAINS A VETO IN WHATEVER FORUM IT PARTICIPATES, THE US VIEWS PROCEDURAL QUESTIONS AS ESSENTIALLY SECONDARY. WE WOULD LIKE TO POINT OUT, HOWEVER, THAT THE ORGANIZATION OF FORUMS AND THE STATUS OF PARTICIPANTS OFTEN IMPLY BASIC POINTS OF SUBSTANCE. THEREFORE, "THE CHOREOGRAPHY OF THE TALKS IS AS IMPORTANT AS THE SUBSTANCE OF THE TALKS".

2. IN RESPECT TO POINT 2 IN THE PROCEDURAL DOCUMENT, WE HAD DELETED "AGREEMENTS ON" TO BE CONSISTENT WITH THE CHANGE IN PROCEDURAL POINT 1 UNDER WHICH THE FIRST FORUM DOES NOT "RESOLVE" THE PRINCIPLES AND GENERAL CONTENTS OF THE POLITICAL QUESTIONS AFFECTING THE SETTLEMENT OF THE VIET NAM WAR. IN THIS CONTEXT, THE WORD "AGREEMENT" LOGICALLY SHOULD BE DELETED FROM THE SUBJECTS TO BE DEALT WITH IN THE SECOND FORUM, BECAUSE THE SECOND FORUM DOES NOT DEAL WITH AGREEMENTS ALREADY CONCLUDED SOMEWHERE ELSE, REGARDING THE POLITICAL FUTURE OF SOUTH VIET NAM.

IN FACT, WE CONSIDER THAT THE SECOND FORUM IS THE ONLY ONE WHICH IS COMPETENT TO DEAL WITH THE INTERNAL POLITICAL QUESTIONS OF SOUTH VIET NAM.

THEREFORE, TO MAKE THE MEANING CLEARER WE PROPOSE TO DELETE, IN ADDITION, THE WHOLE SENTENCE OF POINT 2, BEGINNING WITH "THIS FORUM WILL ALSO DEAL.." AND ENDING WITH "...BETWEEN THE UNITED STATES AND THE DEMOCRATIC REPUBLIC OF VIETNAM".

3. WE HAD DELETED THE WORDS "AND THE NLF" IN PROCEDURAL POINT 3 BECAUSE THE PREVIOUS WORDING WOULD AMOUNT TO RECOGNIZE THAT THERE EXIST TWO GOVERNMENTS IN SOUTH VIETNAM WITH WHICH NORTH VIETNAM WILL DEAL TO SOLVE QUESTIONS BETWEEN NORTH VIETNAM AND SOUTH VIETNAM. THIS NOT ONLY IS A FALSE ASSUMPTION BUT IS ALSO VIOLATES THE LEGALITY OF THE DULY ELECTED GOVERNMENT OF THE REPUBLIC OF VIET NAM.

MOREOVER, IN THE LIGHT OF THE STATEMENT BY THE NLF ON SEPTEMBER 11, 72 PRETENDING THAT THERE ARE TWO GOVERNMENTS IN SOUTH VIETNAM, THE PREVIOUS WORDING COULD BE INTERPRETED AS OUR ACCEPTANCE OF SUCH PRETENSION.

AS THREE WAY FORUM, ON OUR VIEW, IS NOT AN "ESSENTIALLY PERIPHERAL ISSUE" AS YOU SUGGESTED. IT RELATES TO A VERY IMPORTANT SUBSTANTIVE QUESTION

AS A LAST RESORT, HOWEVER, WE WOULD AGREE TO ADD AFTER THE END OF POINT 3 THE FOLLOWING SENTENCE:

"THE NLF CAN PARTICIPATE IN THE DISCUSSION AS PART OF THE DRV DELEGATION".

WE ALSO AGREE TO REPLACE THE WORD "DISCUSS" BY "DEAL WITH" IN POINT 3.

4. IN VIEW OF OUR ABOVE MENTIONED COMMENTS WE SUGGEST THE US COUNTER-PROPOSAL ON THE PROCEDURES FOR THE CONDUCT OF NEGOTIATIONS TO BE PHRASED AS FOLLOWS (SEE ATTACHED DOCUMENTS).

SEPTEMBER 13, 72

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